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Not for Publication

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

SHERRY GARCIA, a married woman,

Plaintiff - Appellant,

v.

**TOGO D. WEST, JR., Secretary of the
Army; CARL L. LAMBETH; THOMAS
G. SEPKA; LOUIS CALDERA,**

Defendants - Appellees.

No. 00-16367

D.C. No. CV-97-00453-WDB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
William D. Browning, District Judge, Presiding

Argued and Submitted April 3, 2003
San Francisco, California

Before: **B. FLETCHER, KOZINSKI** and **TROTT**, Circuit Judges.

1. The district court did not err in granting summary judgment in favor of defendants on Garcia's disparate treatment claim. By her October 17, 1995, email

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to supervisor Brown Zundel, Garcia voluntarily resigned as the army's DMS manager. Accordingly, she cannot show that she suffered any "adverse employment action." Vasquez v. County of L.A., 307 F.3d 884, 889-90 (9th Cir. 2002). Because Garcia does not raise a constructive discharge theory, we need not decide whether her resignation might have been prompted by the army's allegedly discriminatory actions. See, e.g., Watson v. Nationwide Ins. Co., 823 F.2d 360 (9th Cir. 1987).

2. The district court did not err in granting summary judgment in favor of defendants on Garcia's retaliation claim. Even under "an expansive view of the type of actions that can be considered adverse employment actions," Ray v. Henderson, 217 F.3d 1234, 1241 (9th Cir. 2000), Garcia's "entirely subjective" beliefs about the importance of her new position are insufficient to establish a prima facie case of retaliation. Vasquez, 307 F.3d at 896.

3. Garcia's EEOC complaint, even when construed "with the utmost liberality," EEOC v. Farmer Bros., 31 F.3d 891, 899 (9th Cir. 1994) (internal quotation marks omitted), does not include any allegations of sexual harassment. Because Garcia failed to exhaust administrative remedies with regard to her sexual

harassment claim, we lack jurisdiction to review it. See Yamaguchi v. U.S. Dep't of the Air Force, 109 F.3d 1475, 1480 (9th Cir. 1997).

AFFIRMED.